

may remand the proceeding to the Secretary for such further action as the court may direct.

(c)(1) In the case of any civil penalty with respect to which the procedures of this section have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (a) of this section of the proposed penalty.

(2) If the civil penalty has not been paid within 60 calendar days after the assessment has been made under paragraph (c)(1) of this section, the Secretary shall institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(d) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (b) of this section, or after the appropriate District Court has entered final judgment in favor of the Secretary under paragraph (c) of this section, the Secretary shall institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(e)(1) In accordance with the provisions of sections 333(d)(5)(A) and 345 of the Act and notwithstanding the provisions of title 28, United States Code, or section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the General

Counsel of the Department of Energy (or any attorney or attorneys within the Department designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (c) of this section applies including any related collection action under paragraph (d) of this section in a court of the United States or in any other court, except the Supreme Court of the United States. However, the Secretary or the General Counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(2) In accordance with the provisions of sections 333(d)(5)(B) and 345 of the Act, and subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this section, except to the extent provided in paragraph (e)(1) of this section.

(3) In accordance with the provisions of sections 333(d)(5)(C) and 345 of the Act, section 402(d) of the Department of Energy Organization Act shall not apply with respect to the function of the Secretary under this section.

#### § 431.132 Confidentiality.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the person believes to be confidential and exempt from public disclosure should submit one complete copy, and fifteen copies from which the information believed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, the Department shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

**APPENDIX A TO SUBPART G OF PART 431 — COMPLIANCE CERTIFICATION**

**CERTIFICATION OF COMPLIANCE  
WITH ENERGY EFFICIENCY STANDARDS FOR ELECTRIC MOTORS**  
(Office of Management and Budget Control Number: 1910-5104. Expires 02/28/2001)

1. Name and Address of Company (the "company"):

---

---

---

---

2. Name(s) to be Marked on Electric Motors to Which this Compliance Certification Applies:

---

---

---

---

3. If manufacturer or private labeler wishes to receive a unique Compliance Certification number for use with any particular brand name, trademark, or other label name, fill out the following two items:

A. List each brand name, trademark, or other label name for which the company requests a Compliance Certification number:

---

---

---

B. List other name(s), if any, under which the company sells electric motors (if not listed in item 2 above):

---

---

---

Submit by Certified Mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Building Research and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0121.

This Compliance Certification reports on and certifies compliance with requirements contained in 10 CFR Part 431 (Energy Conservation Program for Certain Commercial and Industrial Equipment) and Part C of the Energy Policy and Conservation Act (Public Law 94-163), and amendments thereto. It is signed by a responsible official of the above named company. Attached and incorporated as part of this Compliance Certification is a Listing of Electric Motor Efficiencies. For each rating of electric motor\* for which the Listing specifies the nominal full load efficiency of a basic model, the company distributes no less efficient basic model with that rating and all basic models with that rating comply with the applicable energy efficiency standard.

\* For this purpose, the term "rating" means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which section 431.42 of 10 CFR Part 431 prescribes nominal full load efficiency standards.

Person to Contact for Further Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

---

---

---

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Department of Energy

Pt. 431, Subpt. G, App. A

If any part of this Compliance Certification, including the Attachment, was prepared by a third party organization under the provisions of section 431.123 of 10 CFR Part 431, the company official authorizing third party representations:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Third Party Organization Officially Acting as Representative:

Third Party Organization: \_\_\_\_\_

Responsible Person at that Organization: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

All required determinations on which this Compliance Certification is based were made in conformance with the applicable requirements in 10 CFR Part 431, subpart B. All information reported in this Compliance Certification is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Firm or Organization: \_\_\_\_\_

**ATTACHMENT TO CERTIFICATION OF COMPLIANCE  
WITH ENERGY EFFICIENCY STANDARDS FOR ELECTRIC MOTORS:  
LISTING OF ELECTRIC MOTOR EFFICIENCIES**

Date: \_\_\_\_\_

Name of Company: \_\_\_\_\_

<u>Rating of Electric Motor</u>				
Motor Horsepower/ Kilowatts	Number of Poles	Open or Enclosed Motor	Least Efficient Basic Model - (Model Number(s))	Nominal Full Load Efficiency
1 or .75	6	Open	_____	_____
1 or .75	4	Open	_____	_____
1 or .75	6	Enclosed	_____	_____
1 or .75	4	Enclosed	_____	_____
1 or .75	2	Enclosed	_____	_____
1.5 or 1.1	6	Open	_____	_____
1.5 or 1.1	4	Open	_____	_____
1.5 or 1.1	2	Open	_____	_____
1.5 or 1.1	6	Enclosed	_____	_____
1.5 or 1.1	4	Enclosed	_____	_____
1.5 or 1.1	2	Enclosed	_____	_____
...	...	...	_____	_____
etc.	etc.	etc.	_____	_____

Note: Place an asterisk beside each reported nominal full load efficiency that is determined by actual testing rather than by application of an alternative efficiency determination method. Also list below additional basic models that were subjected to actual testing.

Basic Model means all units of a given type of covered equipment (or class thereof) manufactured by a single manufacturer, and, with respect to electric motors, which (i) have the same rating, (ii) have electrical design characteristics that are essentially identical, and (iii) do not have any differing physical or functional characteristics that affect energy consumption or efficiency.

Rating means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which section 431.42 of 10 CFR Part 431 prescribes nominal full load efficiency standards.

## Models Actually Tested and Not Previously Identified:

Rating of Electric Motor				
Motor Power Output (e.g. 1 hp or .75 kW)	Number of Poles	Open or Enclosed Motor	Basic Model(s) (Model Number(s))	Nominal Full Load Efficiency
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
etc.	etc.	etc.	etc.	etc.

## APPENDIX B TO SUBPART G OF PART 431—SAMPLING PLAN FOR ENFORCEMENT TESTING

Step 1. The first sample size ( $n_1$ ) must be five or more units.

Step 2. Compute the mean ( $\bar{X}_1$ ) of the measured energy performance of the  $n_1$  units in the first sample as follows:

$$\bar{X}_1 = \frac{1}{n_1} \sum_{i=1}^{n_1} X_i \quad (1)$$

where  $X_i$  is the measured full-load efficiency of unit  $i$ .

Step 3. Compute the sample standard deviation ( $S_1$ ) of the measured full-load efficiency of the  $n_1$  units in the first sample as follows:

$$S_1 = \sqrt{\frac{\sum_{i=1}^{n_1} (X_i - \bar{X}_1)^2}{n_1 - 1}} \quad (2)$$

Step 4. Compute the standard error ( $SE(\bar{X}_1)$ ) of the mean full-load efficiency of the first sample as follows:

$$SE(\bar{X}_1) = \frac{S_1}{\sqrt{n_1}} \quad (3)$$

Step 5. Compute the lower control limit ( $LCL_1$ ) for the mean of the first sample using RE as the desired mean as follows:

$$LCL_1 = RE - tSE(\bar{X}_1) \quad (4)$$

where:

RE is the applicable EPCA nominal full-load efficiency when the test is to determine compliance with the applicable statutory standard, or is the labeled nominal full-load efficiency when the test is to determine compliance with the labeled efficiency value, and

$t$  is the 2.5th percentile of a t-distribution for a sample size of  $n_1$ , which yields a 97.5 percent confidence level for a one-tailed t-test.

Step 6. Compare the mean of the first sample ( $\bar{X}_1$ ) with the lower control limit ( $LCL_1$ ) to determine one of the following:

(i) If the mean of the first sample is below the lower control limit, then the basic model is in non-compliance and testing is at an end.

(ii) If the mean is equal to or greater than the lower control limit, no final determination of compliance or non-compliance can be made; proceed to Step 7.

Step 7. Determine the recommended sample size ( $n$ ) as follows:

$$n = \left[ \frac{tS_1(120 - 0.2RE)}{RE(20 - 0.2RE)} \right]^2 \quad (5)$$

where  $S_1$ , RE and  $t$  have the values used in Steps 3 and 5, respectively. The factor

$$\frac{120 - 0.2RE}{RE(20 - 0.2RE)}$$

is based on a 20 percent tolerance in the total power loss at full-load and fixed output power.

Given the value of  $n$ , determine one of the following:

(i) If the value of  $n$  is less than or equal to  $n_1$  and if the mean energy efficiency of the first sample ( $\bar{X}_1$ ) is equal to or greater

## § 431.701

than the lower control limit ( $LCL_1$ ), the basic model is in compliance and testing is at an end.

(ii) If the value of  $n$  is greater than  $n_1$ , the basic model is in non-compliance. The size of a second sample  $n_2$  is determined to be the smallest integer equal to or greater than the difference  $n - n_1$ . If the value of  $n_2$  so calculated is greater than  $20 - n_1$ , set  $n_2$  equal to  $20 - n_1$ .

Step 8. Compute the combined mean ( $\bar{X}_2$ ) of the measured energy performance of the  $n_1$  and  $n_2$  units of the combined first and second samples as follows:

$$\bar{X}_2 = \frac{1}{n_1 + n_2} \sum_{i=1}^{n_1+n_2} X_i \quad (6)$$

Step 9. Compute the standard error ( $SE(\bar{X}_2)$ ) of the mean full-load efficiency of the  $n_1$  and  $n_2$  units in the combined first and second samples as follows:

$$SE(\bar{X}_2) = \frac{S_1}{\sqrt{n_1 + n_2}} \quad (7)$$

(Note that  $S_1$  is the value obtained above in Step 3.)

Step 10. Set the lower control limit ( $LCL_2$ ) to,

$$LCL_2 = RE - tSE(\bar{X}_2) \quad (8)$$

where  $t$  has the value obtained in Step 5, and compare the combined sample mean ( $\bar{X}_2$ ) to the lower control limit ( $LCL_2$ ) to find one of the following:

(i) If the mean of the combined sample ( $\bar{X}_2$ ) is less than the lower control limit ( $LCL_2$ ), the basic model is in non-compliance and testing is at an end.

(ii) If the mean of the combined sample ( $\bar{X}_2$ ) is equal to or greater than the lower control limit ( $LCL_2$ ), the basic model is in compliance and testing is at an end.

### MANUFACTURER-OPTION TESTING

If a determination of non-compliance is made in Steps 6, 7 or 10, above, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number,  $n_3$ , of units be tested, with  $n_3$  chosen such that  $n_1 + n_2 + n_3$  does not exceed 20.

Step B. Compute the mean full-load efficiency, standard error, and lower control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the lower con-

trol limit ( $LCL_2$ ) to determine one of the following:

(a) If the new combined sample mean is equal to or greater than the lower control limit, the basic model is in compliance and testing is at an end.

(b) If the new combined sample mean is less than the lower control limit and the value of  $n_1 + n_2 + n_3$  is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

(c) Otherwise, the basic model is determined to be in non-compliance.

## Subpart Q—Amended Energy Conservation Standards for Certain Commercial Equipment, and Effective Dates

SOURCE: 66 FR 3354, Jan. 12, 2001, unless otherwise noted.

### § 431.701 Purpose and scope.

This subpart sets forth the minimum efficiency levels for commercial equipment, contained in ASHRAE/IES Standard 90.1-1999, that the Department of Energy has adopted as national standards, effective in 2003 or 2004 as specified in §§ 431.701 through 431.704. On their effective dates, these levels will amend and replace some of the efficiency levels required for certain commercial equipment by Section 342(a) of EPCA. The Department has not adopted the efficiency levels specified in ASHRAE/IES Standard 90.1-1999 for products not identified in this subpart, and the levels specified in Section 342(a) of EPCA for those products will remain in force unless and until they are amended. The Department adopted the efficiency levels in this subpart pursuant to Section 342(a)(6) of EPCA, which addresses the establishment of national standards at minimum levels specified in amendments to ASHRAE/IES Standard 90.1, in place of the efficiency levels required in Section 342(a) of EPCA.

### § 431.702 Commercial warm air furnaces.

Each commercial warm air furnace manufactured after October 29, 2003 must meet the following energy efficiency standard levels: